



**INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

July 27, 1998

Ms. Magalie Salas  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington D.C. 20554

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JUL 27 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Salas:

I am enclosing an original and ten copies of the Information Technology Industry Council's comments on the Notice of Proposed Rulemaking in General Docket No. 98-68, "1998 Biennial Regulatory Review-- Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements."

With regards,

John Sullivan Wilson  
Vice President, Technology Policy

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*The association of leading IT companies*

1250 EYE STREET, NW ■ SUITE 200 ■ WASHINGTON, DC 20005

(202) 737-8888 ■ FAX (202) 638-4922

<http://www.itic.org>

Before the

# Federal Communications Commission

Washington, DC 20554

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JUL 27 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
1998 Biennial Regulatory Review-- Amendment of)  
Parts 2, 25, and 68 of the Commission's Rules to)  
Further Streamline the Equipment Authorization) Gen Docket No. 98-68  
Process for Telephone Terminal Equipment,)  
Implement Mutual Recognition Agreements and)  
Begin Implementation of the Global Mobile)  
Personal Communications by Satellite (GMPCS))  
Arrangements )

## COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL

The Information Technology Industry Council ("ITI"), by its attorneys and pursuant to section 1.415 of the Commission's rules, hereby comments on several of the important issues raised by the Commission in its Notice of Proposed Rulemaking (FCC 98-92, released May 18, 1998)(the "NPRM") in the above-captioned proceeding. ITI<sup>1</sup> is a long-standing participant in FCC proceedings that have developed and defined equipment authorization regulations applicable to information technology equipment. ITI's members and

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1ITI represents the leading U.S. providers of information technology products and services. Its members had worldwide revenue of \$420 billion in 1997 and employed more than 1.2 million people in the United States. ITI and its predecessor, the Computer and Business Equipment Manufacturers Association, for more than two decades have played a leading role in the development of rules governing the design and marketing of information technology equipment, including equipment authorization programs, test procedures and importation rules. As with most industry organizations, the positions expressed herein represent a consensus of ITI's members' views, and individual member companies may file comments in this proceeding expressing independent views on particular subject matters.

staff have also played a significant consultative role in the United States' preparations and negotiations of the mutual recognition agreements (MRAs) which are being implemented in this proceeding.

ITI strongly supports Commission actions which streamline the equipment authorization program and improve the time to market for information technology equipment without impairing the interference protection provided by compliance with the Commission's limits on radio frequency emissions. ITI also strongly supports actions which recognize the importance of the global marketplace for information technologies. Implementing Mutual Recognition Agreements will ease domestic manufacturers' ability to compete globally and reduce non-tariff barriers to trade in the global economy. However, ITI is concerned that in creating a new private sector infrastructure to mirror, or even replace the current FCC authorization and testing capabilities, the Commission is missing an opportunity to increase the use of self-certification programs, thereby truly reducing the regulatory requirements imposed on a variety of products without increasing the likelihood of interference to the myriad of users of the radio frequency spectrum.

1. The Commission should give higher priority to expanding the use of Declaration programs in addition to the proposed creation of a new private sector authorization infrastructure.

In the NPRM, the Commission has proposed a broad new program of private sector certification and registration of products subject to the equipment authorization program. The Commission notes that allowing private sector companies to issue authorizations for equipment is likely to improve the speed of the authorization program, provide a multitude of geographically dispersed locations from which to obtain authorizations, and, over time, allow the redirection of resources currently dedicated to the equipment authorization program to other functions, including a more robust enforcement oversight. Of no less import, recognizing the authorizations issued by entities outside of the United States is critical to the successful

negotiation of MRAs, and so it is necessary to allow the private sector in this country to enjoy this opportunity as well.

However, underlying this proposal is the Commission's initial conclusion that it will not expand the class of products that are currently subject to the manufacturers/suppliers declaration authorization programs. ITI believes that this is the wrong approach to simplifying and streamlining equipment authorization. ITI believes the Commission should give higher priority to moving more product types (e.g., low power receive-only devices such as pagers) into its declaration authorization programs than to creating a new authorization infrastructure in the private sector for these product types. The results the FCC desires from a private sector authorization program — speed of authorization, a multitude of geographically dispersed locations from which to obtain authorizations, and, the redirection of staff resources to robust enforcement and oversight — will still be achieved, but with a lessening of the burden on manufacturers, not simply a redirection of the burden. The Commission has a substantial and successful history with its Verification program, a manufacturer declaration program that has served the computing devices industry quite well with no adverse impact on compliance and/or creation of interference. While of newer vintage, the Declaration of Conformity program has met with widespread and increasing acceptance in its application to the consumer-oriented personal computer market, substantially easing the burden of regulation on this robust industry — and reducing the agency resources needed to implement an authorization program — without any apparent adverse consequences. There is simply no reason not to use these programs to achieve the desired results with as many categories of equipment as possible.

ITI has always recognized that an effective authorization program which requires manufacturers to demonstrate compliance with the radio frequency emissions limits imposed under the rules in advance of widespread delivery of devices into commerce is a significant element in the Commission's regulations limiting the emission levels from radio frequency devices. However, ITI does not believe that prior governmental review and approval of a manufacturer's evidence of compliance — either by the FCC or a private agency — is critical to

the success of such an authorization program. To the contrary, prior approval will typically create significant delays in the product introduction cycle, adding substantial costs to the manufacturing process and denying the public the early benefits of product innovation and improvement.<sup>2</sup> In sum, if the FCC is dedicated to simplifying the equipment authorization process, ITI strongly urges that it do so not by duplicating in the private sector the facilities for obtaining prior government approval, but instead for expanding the manufacturers' declaration opportunities.

A move toward greater reliance on manufacturer's declarations would enhance international acceptance of equipment authorization procedures for traded products. This includes trade with the European Union, whose recently concluded MRA with the U.S. was a prime motivation for the FCC's initiation of this rulemaking. Even before the MRA comes into force, the European Union is now moving toward a much greater reliance on manufacturer's declaration of conformity. The draft Directive on Radio and Telecommunications Terminal Equipment, which is nearing final approval in the European Union, allows all telecommunications equipment except some types of radio equipment to be approved for marketing in European on the basis of manufacturer's declarations. The FCC should adopt a similar policy in order to facilitate trade and market access, without reducing the protection of the radio spectrum.

2. If TCBs are created, the FCC must remain available to grant authorizations.

To the extent that the FCC does retain some authorization procedures that will require prior approval of the authorization results, ITI supports the creation of Telecommunications

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<sup>2</sup>For example, in adopting the Declaration of Conformity program, the Commission recognized that the burdens of more detailed prior review of manufacturers' compliance evidence is not absolutely essential to controlling the interference potential of devices in question. The Commission stated, for example, that "submittal and review of equipment authorization applications to the Commission is no longer warranted for certain equipment authorization applications where the technical requirements are met with little difficulty, the test methods are widely understood, interpretive questions arise infrequently, and there has been an excellent record of compliance."

Certification Bodies, or so-called TCBs, to provide private sector alternatives to the government approval facilities. ITI's members have had substantial success in dealing with private sector authorizing bodies in other countries. Of equal importance, the creation of a TCB program will allow the FCC to rely on authorizing agencies outside the United States in providing equipment authorizations to overseas manufacturers (many of which are affiliated with domestic companies), creating the comity which is essential to the recognition of domestically authorized products marketed in foreign countries. The end result should be the creation of a truly open global marketplace for domestic manufacturers.<sup>3</sup> ITI also strongly supports the use of internationally recognized guidelines, i.e., ISO/IEC Guide 65 and ISO/IEC 25, for determining the qualifications of a TCB. ITI also supports use of the National Institute of Standards and Technology National Voluntary Conformity Assessment System Evaluation (NVCASE) program or other accrediting alternatives for evaluating and approving TCBs.

However, ITI has two fundamental differences with the FCC's proposal. First, while ITI agrees that there should not be any limit to the number of TCBs that may be approved<sup>4</sup>, we do not think the FCC should abandon its authorization responsibilities until the market for TCBs is fully competitive. This is important for several reasons. First, since the market will determine the fees that will be charged for TCB authorization, it is critical that the FCC remain as an alternative, with its FCC established fee structure as an appropriate guidepost for fee setting. Assuming differences in the granting of an equipment authorization should not be a matter of quality (i.e., each TCB should be fully qualified by the NVCASE program for the responsibilities it will undertake), fees should be reasonable as measured to the FCC fee structure. While it is likely that some TCBs may charge more than the FCC, these charges should be justified based on convenience (i.e., the location of the TCB relative to the location of the FCC) or speed of service

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<sup>3</sup>Optimally, a set of common methodologies for product approvals, designed to universally recognized standards, will result.

<sup>4</sup>In this regard, the FCC should confirm that a manufacturer may be qualified as a TCB as long as it can meet the requirements set forth in ISO/IEC Guide 65, and in particular, the ability to be impartial.

(i.e., the ability to issue grants substantially faster than the FCC) and not merely on the fact that the authorizing agency is entrepreneurial.

Second, ITI does not believe that TCBs should be engaged in or responsible for post-grant compliance or market-based equipment audits. The Commission has appropriately realized that the TCB authority should be limited to initial authorization, e.g., in noting in paragraph 18 of the NPRM that TCBs will not be authorized to waive the rules, address new or novel questions or otherwise “interpret” the rules or regulations as opposed to applying them consistent with generally accepted standards. In the same vein, ITI strongly believes that enforcement of the FCC’s requirements should be the sole province of the FCC; the TCBs should be limited to the initial grant of equipment authorization. The suggestion, therefore, in paragraph 17 (j), that TCBs should be periodically auditing equipment that they have certified to ensure continuing compliance must be rejected.

There are several reasons for limiting enforcement, including post-authorization sampling and auditing, to the FCC. In ITI's view, the policing function is clearly a matter for the government, and not private interests, to hold. In fact, if TCBs were given enforcement responsibilities, the auditing of products could become a competitive tool between TCBs. In this regard, ITI is concerned that TCBs may have inappropriate incentives to use their auditing function to create a market for their services. Moreover, audits by some TCBs may not be reliable from the FCC's perspective, because they may be reluctant to report failures that could reflect as badly on their own authorization processes as on the manufacturer’s quality controls. Finally, there are no generally accepted standards for auditing products on the market; until a consensus standards organization develops such standards, there are no general bases on which TCBs could conduct audits that would meet reasonable standards for accuracy, consistency, and fairness to the audited manufacturers.

Post-authorization product audits are matters which must remain uniquely under the authority of the FCC. The TCB program and the increased use of manufacturer's declaration will free up resources at the FCC to improve its audit and enforcement programs.

Finally, ITI agrees that a reasonable transition to the TCB program is necessary. However, while a 24 month transition is appropriate, we believe it should run from the final adoption of rules in this proceeding, and not, as proposed, from the effective date of the U.S. - European Union MRA.

3. The United States should develop a program for designating “Competent Bodies”.

The proposed TCB program equates to the “Notified Bodies” program that currently exists in the European Union, allowing designated agencies to issue equipment authorizations for equipment requiring third party testing to specific requirements. Another category (“Competent Bodies”) of laboratories also exists in the European Union for the approval of Technical Construction Files. ITI believes that US industry would benefit significantly if U.S.-based laboratories could fulfill this role with respect to products exported to Europe. ITI suggests that the FCC work with other responsible U.S. Government agencies to ensure that laboratories currently accredited under either National Voluntary Laboratory Accreditation Program (NVLAP) or American Association for Laboratory Accreditation (A2LA) accreditation are designated Conformity Assessment Bodies for the purposes of meeting any European regulation requiring the use of Conformity Assessment Bodies (“CAB”). These CABs would form the counterpart of the Competent Bodies in the European Union.

4. Mutual recognition of test results and accrediting bodies should be pursued with all trading partners.

ITI congratulates the Commission on its efforts in negotiating a Mutual Recognition Agreement with the European Union nations. The momentum created by the signing of the U.S.-European Union MRA should not be lost in pursuing agreements with all of its other trading partners in Asia and the Americas for recognizing and accepting compliance test results, manufacturer's declarations of conformity, and certifications accomplished in other countries. Such agreements are critical to assure that domestic manufacturers are able to export product as

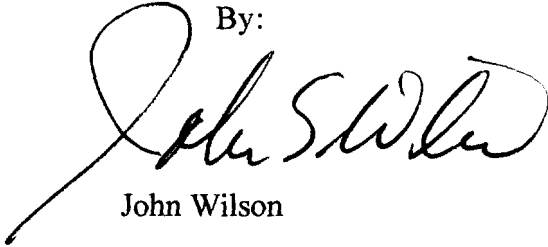


expeditiously and easily as possible, while also bringing to this country devices that they have manufactured and tested overseas on reliable facilities.

Respectfully submitted,

**Information Technology Industry Council**

By:

A handwritten signature in black ink, appearing to read "John Wilson", with a large, stylized initial "J" and "W".

John Wilson

Vice President, Technology Policy

July 27, 1998